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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,051	12/13/2000	Hua Zhu Ke	PC9344BRTR	6748

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EXAMINER
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LEARY, LOUISE N

ART UNIT	PAPER NUMBER
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1654

18

DATE MAILED: 02/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/736,051

Applicant(s)

KE ET AL.

Examiner

Louise N. Leary

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11/14/02.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 6-14, 16-30, 33-42, 45-50, 52-55, 57-62, 65-69, 72-75, 79, 80, 84-89 and 92 is/are allowed.
- 6) ☒ Claim(s) 93-108 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: EC

Continuation Sheet (PTO-326)

Continuation of Disposition of Claims: Claims pending in the application are 1-4,6-14,16-30,33-42,45-50,52-55,57-62,65-69,72-75,79,80,84-89 and 92-108.

1. Claims 1-4, 6-14, 16-30, 33-42, 45-50, 52-55, 57-62, 65-69, 72-75, 79-80, 84-89, and 92-108 are pending in this application.
2. The examiner acknowledges receipt and careful consideration of applicant's response to the office action mailed October 31, 2002. An office action on the merits is given below.
3. Applicant's arguments filed November 14, 2002 have been fully considered but they are not persuasive.

At page 1 of the response and request for reconsideration, applicant's have traversed the rejection of claims 93-108 under 35 USC 135(b). The examiner disagrees with applicant's traversal of the rejection under 35 USC 1.35(b) for the reasons given below.

First, applicants have asserted "A copy of this Amendment is attached. The certificate of mailing on the first page of the Amendment shows that it was mailed on March 27, 2001 in compliance with the certificate of mailing procedures in 37 C.F.R. 1.8. Accordingly, the claims were timely filed." However, with respect to applicant's assertion of compliance with the certificate of mailing procedures in 37 C.F.R. 1.8, the examiner notes for the record that the first page of the duplicate copy of the Amendment filed under 37 C.F.R. 1.607 was signed by applicant's representative, "Jean M. Marshall", as being deposited with the United States Postal Service on the 27<sup>th</sup> day of March, 2001. As of today, applicant's representatives have not provided the US Patent & Trademark Office with a certified copy of the certificate of mailing issued by the US Postal Office on March 27, 2001 nor March 28, 2001. Applicants have not provided official evidence that the amendment was filed with the US Postal Service with sufficient postage as first class mail prior to expiration of the set one year time period. In addition, applicants have not provided official evidence that the amendment was filed in the US Patent & Trademark Office prior to the one year expiration period. Thus, applicant's copied

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claims 93-108 presented in the amendment filed in the US Patent & trademark Office on March 29, 2001 are not in compliance with 37 C.F.R. 1.8.

Secondly, claims 93-108 of this application have been copied by the applicant from U.S. Patent No. 6,043,026. U. S. Patent No. 6,043,026 was granted on March 28, 2000. The copied claims in this application were received at the US Patent & Trademark Office on March 29, 2001. As of today, applicants have not provided an official copy of the certificate of mailing dated March 27, 2001 or March 28, 2001 to the USPTO. Thus, applicant's copied claims 93-108 presented in the amendment filed in the US Patent & trademark Office on March 29, 2001 are not in compliance with 37 C.F.R. 1.8.

Therefore, claims 93-108 remain rejected under 35 USC 135(b) as not being copied and filed in the US Patent & Trademark Office prior to one year from the date on which US Patent No. 6,043,026 was granted.

4. Claims 1-4, 6-14, 16-30, 33-42, 45-50, 52-55, 57-62, 65-69, 72-75, 79-80, 84-89, and 92 are allowable over the prior art of record.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louise N. Leary whose telephone number is (703) 308-3533. The examiner can normally be reached on Monday to Friday from 9:30 to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703)308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1235.

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LOUISE N. LEARY  
PRIMARY EXAMINER

February 1, 2003